STATE OF MICHIGAN

COURT OF APPEALS

THE CINCINNATI INSURANCE COMPANY, Plaintiff-Appellee,	UNPUBLISHED November 17, 2015
v	No. 322840 Genesee Circuit Court
V. K. VEMULAPALLI, Defendant-Appellant.	LC No. 99-065843-NO

Before: STEPHENS, P.J., and CAVANAGH and MURRAY, JJ.

PER CURIAM.

Defendant appeals by right from an order of the trial court granting plaintiff summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) on the question of whether plaintiff owed defendant penalty interest under the Uniform Trade Practices Act, MCL 500.2001 *et seq.* (UTPA). This case has been the subject of three prior appeals. *Cincinnati Ins Co v Vemulapalli*, unpublished opinion per curiam of the Court of Appeals, issued July 30, 2013 (Docket No. 309980) (*Vemulapalli III*); *Cincinnati Ins Co v Vemulapalli*, unpublished opinion per curiam of the Court of Appeals, issued July 5, 2011 (Docket No. 295871) (*Vemulapalli II*); *Cincinnati Ins Co v Vemulapalli*, unpublished opinion per curiam of the Court of Appeals issued December 6, 2002 (Docket No. 233235) (*Vemulapalli I*).

In *Vemulapalli III*, we directed the trial court to consider three questions: whether plaintiff complied with MCL 500.2006(3); whether defendant was excused from the requirement to submit satisfactory proof of loss; and whether plaintiff timely paid defendant's claims. The trial court concluded that plaintiff had complied with MCL 500.2006(3), that defendant was not excused from the requirement to submit satisfactory proof of loss, and that plaintiff had timely paid defendant. We affirm.

I. FACTUAL BACKGROUND

This case began in 1998 when a building owned by defendant known as the Genesee Towers, which was insured by plaintiff, suffered extensive damage due to flooding caused by a rupture in the building's plumbing system. On September 24, 1998, defendant sent plaintiff four documents, each titled "Sworn Statement in Proof of Loss." The first is identified as being for "BUILDING," the second "CONTENTS," the third "VALUABLE PAPERS," and the fourth "BUSINESS INCOME/LOSS OF RENTS." Each states that the identified loss occurred at

Genesee Towers due to an "accidental discharge of water," that defendant is the sole owner of the building, and that the building was occupied at the time of the loss and being used as an office building and parking structure. The record contains no evidence of any documentation being sent along with these four statements. In a letter dated October 23, 1998, plaintiff informed defendant that there was insufficient documentation included with the sworn statements to determine the actual amount of any loss and that the claims would therefore be rejected. The parties eventually engaged in an appraisal process that resulted in three separate awards for defendant.

Plaintiff filed an action for declaratory relief disputing the umpire's award of $657,000 for a fire alarm system. On appeal to this Court, *Vemulapalli I*, this Court affirmed the trial court's determination that the fire alarm was a covered loss but reversed the trial court's finding that the defendant could recover replacement expenses prior to incurring those costs. The opinion noted that the trial court "may, if necessary, hold an evidentiary hearing" to determine how much defendant had actually incurred in replacing the system and, therefore, what damages defendant should be awarded. *Id*. at 11-12. On remand, the parties submitted to arbitration and the arbitrator awarded defendant $579,407.76 in May 2005, but reserved the issue of penalty interest. That award was reduced to a judgment dated May 13, 2005 and paid shortly thereafter by plaintiff. Defendant subsequently moved to have interest for the award calculated under the UTPA. The trial court concluded that defendant was not entitled to interest under the UTPA, although it was entitled to statutory interest under MCL 600.6013.

Approximately four years later, defendant moved the trial court again for an award of penalty interest under the UTPA. Ultimately, the trial court entered an order requiring plaintiff to pay interest under MCL 600.6013 from the date of the filing of the complaint until the date that plaintiff paid the $579,407.76 judgment—a total of $205,826.80. The case then came to this Court a second time. This Court reversed the trial court's award of statutory interest under MCL 600.6013 and remanded the case to the trial court with instructions to consider whether penalty interest under MCL 500.2006 could be awarded due to defendant being excused from the requirement to submit satisfactory proof of loss. *Vemulapalli II*, unpub op at 4-5. On remand, the trial court found that defendant had not submitted satisfactory proof of loss, but failed to address whether the requirement to submit satisfactory proof of loss could be excused. In *Vemulapalli III*, unpub op at 5, we again remanded to the trial court with instruction that it address the following three questions:

> 1. First, determine whether the insurer complied with MCL 500.2006(3), and, if not, whether submission of a proof of loss was excused;
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> 2. Second, if the insurer complied with MCL 500.2006(3), determine whether the insured supplied a satisfactory proof of loss as required by MCL 500.2006.
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> 3. Third, if the insured supplied a satisfactory proof of loss or it was excused, determine whether the insurer paid the claim timely under MCL 500.2006.

Thereafter, the trial court ruled that plaintiff's October 1998 letter complied with the requirements of MCL 500.2006(3) and that, accordingly, defendant was not excused from submitting a satisfactory proof of loss. The trial court further found that defendant never did provide a satisfactory proof of loss, and that plaintiff timely paid defendant in May 2005 when it satisfied the judgment entered after the arbitration award.

II. STANDARD OF REVIEW

"This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

III. ANALYSIS

MCL 500.2006 of the UTPA states in part as follows:

> (3) An insurer shall specify in writing the materials that constitute a satisfactory proof of loss not later than 30 days after receipt of a claim unless the claim is settled within the 30 days. If proof of loss is not supplied as to the entire claim, the amount supported by proof of loss shall be considered paid on a timely basis if paid within 60 days after receipt of proof of loss by the insurer. Any part of the remainder of the claim that is later supported by proof of loss shall be considered paid on a timely basis if paid within 60 days after receipt of the proof of loss by the insurer. . . .
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> (4) If benefits are not paid on a timely basis the benefits paid shall bear simple interest from a date 60 days after satisfactory proof of loss was received by the insurer at the rate of 12% per annum, if the claimant is the insured or an individual or entity directly entitled to benefits under the insured's contract of insurance. . . .

It is clear that the Legislature intended "that failure to specify in writing the materials which constitute satisfactory proof of loss excuses the requirement of said proof of loss in MCL 500.2006(4)." *Medley v Canady*, 126 Mich App 739, 745; 337 NW2d 909 (1983). See also *Angott v Chubb Group of Ins Cos*, 270 Mich App 465, 486; 717 NW2d 341 (2006), overruled on other grounds by *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 553; 741 NW2d 549 (2007) (*Griswold II*),[1] citing *Medley*, 126 Mich App at 745 ("If [the insurer] did not comply

[1] *Griswold II*, was a conflict panel decision in which the Court held that a first-party insured can receive penalty interest under MCL 500.2006(4) even if the claim is reasonably in dispute. 276 Mich App at 553.

with this provision, [the insured] was excused from submitting a proof of loss and the matter shall proceed as if a satisfactory proof of loss were submitted.").[2]

The issue of an insured's duty under MCL 500.2006(3) was also discussed in one of the consolidated cases at issue in *Griswold Props, LLC v Lexington Ins Co*, 275 Mich App 543, 560-568; 740 NW2d 659 (2007) *(Griswold I)*, overruled on other grounds by *Griswold II*, 276 Mich App at 553.[3] In that case, *Gainors Meat Packing, Inc v Home-Owners Ins Co*, the insured submitted a "sworn statement in proof of loss" that included "a breakdown of losses and repair bids from contractors." *Id.* at 561. The insurer admitted some losses and provided a partial payment but refused to pay the entire claim on the basis that the plaintiff had exaggerated its losses. *Id.* The matter was submitted to appraisal and ultimately wound up in litigation. *Id.* at 562. On appeal, this Court declared that an insurer's "failure to comply with [MCL 500.2006(3)] is essentially acceptance of the proof of loss submitted." *Id.* at 564. The Court explained the rationale underlying this conclusion:

> The policy reason for such a holding is clear—if an insurer is not held to the requirement to provide written notice of specific issues in the proof of loss and specific remedies that will render the proof of loss satisfactory, then the insured is defenseless against blanket rejections. If the insurer does properly respond with sufficient detail in its rejection of a loss statement, the insured is properly positioned to address any issues raised. Also, when the insured responds to the insurer's written request for additional documentation or evidence, the contours of any reasonable dispute about the amount of loss should be fairly well delineated. [*Id.* at 565.]

In the present case, it is undisputed that plaintiff received a claim from defendant in September 1998 and responded in October 1998. The issue is whether plaintiff's October 1998 response complied with MCL 500.2006(3)'s requirement that an insurer notify an insured in writing what materials constitute a satisfactory proof of loss. The trial court determined that the October 1998 letter did comply with MCL 500.2006(3) because, while it did not say much, it "mentions replacement is required, along with detail regarding costs and materials installed. The letter also requests a breakdown for costs associated with each component part and labor."

However, unlike in *Griswold I*, where the insured (Gainors Meat Packing) submitted "a breakdown of losses and repair bids from contractors," *id.* at 561, defendant in this case simply

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[2] While portions of *Angott*, discuss caselaw overruled by *Griswold II* on whether the claim was reasonably in dispute, 270 Mich App at 478-479, the portion of *Angott* that discusses an insurer's duty under MCL 500.2006(3) and whether a failure to perform that duty could excuse an insured from submitting a satisfactory proof of loss, *id.* at 486, was not overruled.

[3] While portions of *Griswold I*, discuss caselaw overruled by *Griswold II* on whether the claim was reasonably in dispute, 275 Mich App at 546-551, the portion of *Griswold I* that discusses an insurer's duty under MCL 500.2006(3) and whether a failure to perform that duty could excuse an insured from submitting a satisfactory proof of loss, *id.* at 560-568, was not overruled.

submitted four documents that stated little more than the fact that an accident occurred and that it was therefore entitled to $1,039.959.92 for damage to the building (on a $12 million policy), $10,000 for the contents lost/damaged (on a $10 thousand policy), and $18,600 for valuable papers lost/damaged (on a $25 thousand policy), with the amount claimed for loss of business income/loss or rents "To be determined." There was no documentation or breakdown of costs for plaintiff to review and identify particular problems that could then be conveyed to defendant.

Thus, plaintiff's October 1998 response provided defendant with the information needed to advance its claim as it stood at that point in time. Here, the insured (defendant) responded to a generalized request for some documentation by submitting a claim with no documentation at all. This is clearly an unsatisfactory proof of loss. Having concluded that defendant was not excused from submitting satisfactory proof of loss, we conclude that plaintiff timely paid defendant and that defendant is not entitled to penalty interest. The UTPA states that payment is timely if it is made within sixty days after the receipt of satisfactory proof of loss. MCL 500.2006(3). The first time sufficient proof of loss was submitted was at the time of the arbitration award, and there is no dispute that plaintiff paid that award within sixty days of it being reduced to a judgment.[4]

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Christopher M. Murray

[4] Defendant claims penalty interest is due for payments plaintiff made on June 10, 1999, August 5, 1999, and April 25, 2001. However, defendant does not provide adequate citation to proofs in the record that such payments were made on these dates.